

grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, see § 4.471.

[68 FR 68770, Dec. 10, 2003]

§ 4.471 How to petition for a stay of a final BLM grazing decision.

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies on—

(1) Any other person named in the decision from which the appeal is taken; and

(2) The appropriate office of the Office of the Solicitor, in accordance with § 4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

[68 FR 68770, Dec. 10, 2003]

§ 4.472 Action on an appeal and petition for a stay.

(a) BLM must transmit any documents received under §§ 4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents

from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay. BLM must serve a copy of any such response on the appellant and any other person named in the decision from which the appeal is taken.

(b) Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c), and any other person named in the decision.

(c) If a petition for a stay has not been filed, BLM must promptly transmit the following documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; and the final BLM grazing decision.

(d) Within 45 days after the expiration of the time for filing a notice of appeal, an administrative law judge must grant or deny—

(1) A petition for a stay filed under § 4.471(a), in whole or in part; and

(2) A motion to intervene filed with a response to the petition under paragraph (b) of this section.

(e) Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the administrative law judge denies a petition for a stay or fails to act on the petition within the time set forth in paragraph (d) of this section.

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(f) At any appropriate time, any party may file with the Hearings Division a motion to dismiss the appeal or other appropriate motion. The appellant and any other party may file a response to the motion within 30 days after receiving a copy.

(g) Within 15 days after filing a motion or response under paragraph (f) of this section, any moving or responding party must serve a copy on every other party. Service on BLM must be made on the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c).

[68 FR 68770, Dec. 10, 2003]

§ 4.473 Time and place of hearing; notice; intervenors.

At least 30 days before the date set by the administrative law judge the authorized officer will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the authorized officer may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

§ 4.474 Authority of administrative law judge.

(a) The administrative law judge is vested with the duty and general authority to conduct the hearing in an orderly, impartial, and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The administrative law judge shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 4.26 of the general rules in Subpart B of this part, to

the extent such regulations are applicable.

(b) The administrative law judge also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 4.452–3.

(c) The administrative law judge may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision.

(d) An administrative law judge may consolidate two or more appeals for purposes of hearing and decision when they involve a common issue or issues.

[44 FR 41790, July 18, 1979. Redesignated and amended at 68 FR 68770, 68771, Dec. 10, 2003]

§ 4.475 Service.

Service of notice or other documents required under this subpart shall be governed by §§ 4.413 and 4.422. Proof of such service shall be filed in the same office where the notice or document was filed within 15 days after such service, unless filed with the notice or document.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

§ 4.476 Conduct of hearing; reporter's fees; transcript.

(a) The appellant, the State Director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The administrative law judge will state any other issues on which he may wish to have evidence presented. Issues which appear to the administrative law judge to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State Director or his representative, unless the administrative law judge rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the